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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,760

03/11/2004

Marcus L. Thuesen

THUE:002

6421

39456 7590 12/28/2006
KEITH B. WILLHELM, ATTORNEY AT LAW
6266 DEL MONTE
HOUSTON, TX 77057

EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/28/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/798,760

Applicant(s)

THUESEN ET AL.

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5, 8-16, 18-20 and 24-49 is/are pending in the application.
- 4a) Of the above claim(s) 8, 10, 27 and 30-42 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 and 45-49 is/are allowed.
- 6) ☒ Claim(s) 1, 4, 9, 11-16, 18-20, 24-26, 28, 29, 43 and 44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 8, 10, 27 and 30-42 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to the Amendment After Final filed 20 November 2006. Claims 1, 4, 5, 8-16, 18-20, and 24-49 are pending in the application. Claims 8, 10, 27, and 30-42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12 July 2005.

2. In view of the Amendment filed on 20 November 2006, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

4. Claims 1, 4, 9, 11-16, 18-20, 24, 25, 43, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller, III (US 2004/0010448 A1; hereinafter Miller) in view of Planchard (FR 2422562 A; provided by applicant) and admitted prior art.

Claim 1: Miller discloses a method for advertising wherein an advertisement is placed on a single-serve food product (see paragraph [0002]). Miller does not expressly disclose the structure of the package.

Planchard discloses a pouch container for liquid, power, paste, granules or any solid. Although Planchard discloses a preferred product of cleaning or toiletry products, the reference does not restrict the use of the package to products. The pouch container of Planchard is of one or more flexible, imprintable sheets **1 & 2**, with one or more pouch portions defining a sealed volume **8 & 9** accommodating a product, and a message section **6 & 7** with a advertisement **10** that is separable from the pouch sections without compromising the integrity of the sealed volume. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the product of Miller in a pouch as taught by Planchard in order to provide the single-serve food product to a vendor at a reduced price (see Mille paragraph [0001]).

As admitted by the applicant on page 20 of the response of 31 October 2005, the use of third party products to cross-ruff manufacturer coupons was known in the art and it would have been obvious to provide the advertisement of Miller-Planchard as a manufacturer's coupon in order to entice the consumer to buy the third party product.

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Likewise, as admitted by the applicant on page 20 of the response of 31 October 2005, it would have been obvious to provide a bar-code (i.e. a machine readable code).

Further, as admitted by the applicant on page 20 of the response of 31 October 2005, it would have been obvious to distribute the product to a consumer food service outlet with subsequent distribution to the consumer.

Claim 4: Miller teaches the advertisement as pertaining to a product or service other than the packaged product (paragraph [0004]).

Claim 9: Planchard discloses a pre-cut line for separation (translation page 3, lines 24-25).

Claims 11-16: The claimed sizes do not affect the method in a manipulative sense. It has been held that to be entitled to weight in method claims, the recited structure limitations must affect the method in a manipulative sense, and not amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961). Further, the provision of the pouch in the claimed sizes would amount to an obvious matter of design choice dependent upon the quantity of product to be provided. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Claims 18-20: Miller discloses sugar or condiment packets, which are granules, liquids, or pastes.

Claims 24 and 25: As admitted by the applicant on page 20 of the response of 31 October 2005, the use of a bar code on a coupon was known in the art and would have been obvious to include on the coupon of Miller-Planchard for rapid reading by

machine. The specific code would amount to an obvious matter of design choice dependent upon industry standards.

Claim 43: Miller teaches a target consumer group.

Claim 44: As admitted by the applicant on page 20 of the response of 31 October 2005, it would have been obvious to distribute the product to consumer food service outlets that are restaurants.

5. Claims 26, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller-Planchard-Admitted Prior Art, as applied to claims 24 and 25 above, and further in view of Matthews et al (US 4,007,577; hereinafter Matthews).

Claim 26: Miller-Planchard-Admitted Prior Art, as applied to claims 24 and 25 above, discloses the claimed invention except for the folding a sealing of a continuous web.

Matthews teaches the formation of condiment pouches by folding a continuous web **45A or 45B**. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the pouch of Miller-Planchard-Admitted Prior Art by folding a continuous web as taught by Matthews in order to produce the pouches at a high speed.

Claim 28: Miller-Planchard-Admitted Prior Art-Matthews, as applied to claim 26 above, discloses the claimed method.

Claim 29: Planchard anticipates a single, rectangular pouch section (Figure 8) and Matthews discloses the claimed sealing arrangement (see Figures 5 and 24).

Allowable Subject Matter

6. Claims 5 and 45-49 appear to be allowable over the available prior art.
7. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

8. Applicant's arguments, see page 14, filed 20 November 2006, with respect to claim(s) 5 and 45-49 have been fully considered and are persuasive. The rejection of claim(s) 5 and 45-49 has been withdrawn.
9. Applicant's arguments with respect to the remaining claims have been fully considered but they are not persuasive. Applicant readily admits on page 20 of the response of 31 October 2005, that it was conventional to provide a bar-coded coupon (i.e. a machine readable code).

Conclusion

10. As new grounds of rejection are presented above, this Office Action is made **NON-FINAL**.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Greg Pickett, Examiner
25 December 2006

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by
signing below:

For

Mickey Yu
SPE


LUANK BUI
PRIMARY EXAMINER